

disabled while engaged in the discharge of his or her duties will receive a disability benefit and provides for the continuation of these benefits to the member's surviving beneficiary(ies). Section _____ provides that the surviving spouse of a member who was determined by the Board of Trustees to have been killed in the line of duty will receive a death benefit. The eligibility of members and their surviving beneficiary(ies) for disability and death benefits is made by the Board of Trustees in accordance with the procedures set forth in Section _____. Section _____ provides that a member or surviving beneficiary must make an application to the Board of Trustees for a job-related disability or death benefit. Section _____ provides that the member or surviving beneficiary must provide the Board of Trustees with objective proof of disability demonstrating that the member cannot perform the duties of a firefighter or police officer and became disabled while engaged in the discharge of the member's duties as a firefighter or police officer, or was killed in the line of duty. The disability benefits under Section _____, the job-related disability provisions of Section _____, and the death benefits under Section _____ are determined without regard to the member's age, length of service, or prior employee contributions.

Section _____ of the City Code provides, in relevant part, that a member may elect to have the disability benefits payable under Section _____ paid in an optional form of payment under Section _____. Taxpayer represents that individuals who have been determined to have a job-related disability under Section _____ or Section _____ may elect to have the disability benefits paid under one of the optional forms of payment set forth in Section _____ without regard to whether the member has satisfied the age or service requirements set forth in Section _____. Section _____ provides that the optional forms of payment under Section _____ are the actuarial equivalent of the disability benefit payable to the member based on the mortality assumptions approved from time to time by the Board, and on the age of the member and the beneficiary as of the date the member is eligible to make the election. These optional forms of payment provide for the disability benefit payable to the member under Section _____ and Section _____ to be paid to the surviving beneficiary(ies) upon the death of the disabled member.

RULING REQUESTED

Taxpayer requests a ruling that survivor benefits paid by Taxpayer to the beneficiaries of deceased members under Section _____ and under the job-related disability provisions of Section _____ of the City Code are paid under a statute in the nature of a workmen's compensation act, are the continuation of payments to a member for a job-related disability or death benefit for a member killed in the line of duty and, therefore, are excluded from gross income under section 104(a)(1) of the Code.

LAW

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 72(a) of the Code provides that, except as otherwise provided, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life-insurance contract.

Section 104(a)(1) of the Code provides that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Treas. Reg. § 1.104-1(b) provides that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Treas. Reg. § 1.104-1(b) also provides this exclusion to compensation paid under a workmen's compensation act to the survivor or survivors of a deceased employee. Treas. Reg. § 1.104-1(b) states that this exclusion does not apply to the amount received either to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

In Rev. Rul. 80-44, 1980-1 C.B. 34, a statute in the nature of a workmen's compensation act provided for an allowance of the greater of (A) 60 percent of the individual's average final compensation or (B) the amount to which the individual would be entitled under the normal, years of service, retirement plan. Rev. Rul. 80-44 held that the benefits under the statute were excludable under section 104(a)(1) of the Code to the extent that they did not exceed 60 percent of the final average compensation. Any excess over 60 percent of final average compensation was attributable to length of service, and therefore not excludable from gross income. Rev. Rul. 80-44 also held that benefits of the surviving spouse which are a continuation of the employee's benefits are excludable under section 104(a)(1) of the Code in the same percentage as the employee's benefits were excludable.

Rev. Rul. 80-84, 1980-1 C.B. 35, held that benefits paid to employees' survivors may qualify as paid under a statute in the nature of a workmen's compensation act where those benefits are a mere continuation of employees' section 104(a)(1) benefits. The ruling also stated that a statute authorizing benefits for employees' survivors may qualify as a statute in the nature of a workmen's compensation act if it requires as a prerequisite to payment a determination that the cause of the employee's death was service-related. Rev. Rul. 80-84 also held that these benefits are excluded from gross

income if the recipient can establish that the benefits are received under the service-connected death provisions.

Rev. Rul. 85-104, 1985-2 C.B. 52, considered a statute under which the participants, who were disabled due to work-related injury or sickness, receive the greater of a fixed percentage of base salary or an amount computed on the basis of years of service. The ruling concluded that an amount up to the percentage of base salary specified by the statute would be excludable from the participant's gross income under section 104(a)(1) of the Code, but that any excess, computed on the basis of length of service, would not be excludable under section 104(a)(1). The ruling also concluded that if the benefits are computed by a formula that does not refer to the employee's age, length of service, or prior contributions and are provided to a class that is restricted to employees with service-incurred injuries, then the benefits are payment for those injuries, and the statute under which the benefits are paid qualifies as a statute in the nature of a workmen's compensation act.

ANALYSIS AND CONCLUSION

Section _____ and the job-related disability provisions of Section _____ of the City Code, limit disability and death benefits to members or surviving beneficiary(ies) that the Board of Trustees determined have incurred a disability while engaged in the discharge of his or her duties or were killed in the line of duty. The disability and death benefits are not determined on the basis of age, length of service, or prior employee contributions, and are provided to a class that is restricted to employees with service-connected injuries or sickness or killed in the line of duty. Therefore, Section _____ and the job-related disability provisions of Section _____ of City Code provide benefits under a statute in the nature of a workmen's compensation act.

Treas. Reg. § 1.104-1(b) provides that compensation paid under a workmen's compensation act to the survivor or survivors of a deceased employee is excluded from gross income under section 104(a)(1) of the Code. Rev. Rul. 80-44 and Rev. Rul. 80-84 held that benefits to survivors were excludable from the beneficiaries' gross income if the payments were continuations of the payments to the deceased employee or are received under the service-connected death provisions.

Based on the representations made by Taxpayer and the authorities cited above, we conclude as follows:

Payments to the surviving beneficiary(ies) of a deceased member under Sections _____ and the job-related disability provisions of Section _____ of the City Code that are a continuation of job related disability payments or are service-connected death benefits are excluded from the gross income of a surviving beneficiary under section 104(a)(1) of the Code and Treas. Reg. § 1.104-1(b).

To the extent the benefits paid by Taxpayer to a survivor of a deceased member who suffered a disability that arose out of and in the course of employment exceeds the actuarial equivalent of the benefit payable under Section _____ and Section _____ of the City Code, the excess is includible in gross income and taxable under section 72 of the Code. In addition, any benefit payable to a surviving beneficiary that is determined by reference to the member's age, length of service, or prior employee contributions, is includible in gross income and taxable under section 72 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or Treasury regulations or the City Code, other than those specifically stated above.

This ruling is directed only to the party requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon representations submitted by Taxpayer. While this office has not verified any of the material submitted in support of the request for this ruling, it is subject to verification on examination.

Sincerely,

Denise Trujillo
Chief, Health & Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: